

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Promoting Expanded Opportunities for Radio	)	ET Docket No. 10-236
Experimentation and Market Trials under Part	)	
5 of the Commission's Rules and Streamlining	)	
Other Related Rules	)	
	)	
2006 Biennial Review of Telecommunications	)	ET Docket No. 06-105
Regulations – Part 2 Administered by the	)	
Office Of Engineering and Technology (OET)	)	

**COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®**

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## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY .....	2 -
II. CTIA SUPPORTS THE COMMISSION’S PROPOSALS TO ALLOW GREATER FLEXIBILITY IN EXPERIMENTAL LICENSING TO FACILITATE WIRELESS INNOVATION, WITH APPROPRIATE SAFEGUARDS TO PROTECT INCUMBENTS. ....	3 -
A. The Commission Should Expand Eligibility for Research Program Licenses to Include Commercial Entities, While Protecting Incumbent Operations. ....	7 -
B. The Commission Should Authorize Single-Entity Use of an Innovation Zone and Allow Parties to Use Spectrum Inventory Frequencies, While Protecting Incumbent Operations. ....	9 -
C. The Commission Should Authorize Medical Program Licenses for All Devices with a Medical Purpose, and It Should Limit Operations to the Licensee’s Medical Campus. ....	12 -
III. THE EXPERIMENTAL LICENSING RULES SHOULD BE STREAMLINED, CONSOLIDATED, AND MODIFIED TO FOSTER GREATER INNOVATION AND EXPERIMENTATION ACROSS WIRELESS SERVICES. ....	13 -
A. The Commission Should Adopt the Proposed Rule Changes to Provide Greater Opportunities for a Wider Variety of Entities to Engage in Market Trials and Testing. ....	13 -
B. CTIA Endorses the Commission’s Proposals to Streamline and Synchronize its Existing Experimental and Developmental Licensing Rules, and to Make Other Improvements to the Rules. ....	17 -
IV. THE COMMISSION SHOULD STREAMLINE THE PROCESSING OF ASSIGNMENTS AND TRANSFERS OF CONTROL. ....	18 -
V. CONCLUSION .....	22 -

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**COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®**

CTIA – The Wireless Association® (“CTIA”)<sup>1</sup> respectfully submits these comments in response to the Notice of Proposed Rulemaking (“*NPRM*”) released by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.<sup>2</sup> CTIA applauds the Commission’s efforts to streamline its experimental and developmental licensing rules, provide new opportunities for wireless research and innovation, and enhance opportunities for a wide variety of entities to engage in market trials and testing. As discussed below, however, the Commission should protect licensed wireless operations against interference from new types of experimental licenses. It should also ensure that entities do not mask

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<sup>1</sup> CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> *Promoting Expanded Opportunities for Radio Experimentation and Market Trials Under Part 5 of the Commission’s Rules and Streamlining Other Related Rules*, Notice of Proposed Rulemaking, 25 FCC Rcd 16544 (2010) (“*NPRM*”).

consumer product rollouts as market trials. Finally, it should revise its rules to provide streamlined processing for transfer of control and assignment applications involving experimental radio licenses.

## **I. INTRODUCTION AND SUMMARY**

CTIA supports the Commission's efforts to accelerate research and innovation by "us[ing] the power of experimental licensing to shorten the time it takes to transform concepts into consumer products and to bring ideas from the lab to the marketplace."<sup>3</sup> In particular, it supports the Commission's proposal to provide additional experimentation flexibility through research, innovation zone, and medical program experimental radio licenses. It is critical, however, that the Commission adopt appropriate safeguards and interference protections (especially for incumbent commercial mobile radio service ("CMRS") operations) to ensure that the additional experimentation does not harm consumers or undermine wireless investment, innovation, and efficient spectrum use. The Commission should also limit experimental and developmental licenses, at least initially, to two-year terms. In addition, it should make research program licenses available to wireless vendor and carrier laboratories, make innovation zone licenses available to single entities, and make medical program licenses available for testing all devices with a general medical purpose.

CTIA also supports the Commission's proposals to streamline, consolidate, and modify its rules to facilitate additional experimentation. To promote additional opportunities for wireless innovation and research, the Commission should clarify and relax its Part 2 and Part 5 rules to enhance opportunities for a wide variety of entities to engage in market trials and testing, although it should restrict the marketing and sale of uncertified equipment to ensure that entities

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<sup>3</sup> *Id.* ¶ 11.

do not engage in *de facto* consumer product rollouts. It should also clarify that the prohibition on the operation of devices in a residential area does not apply when the operation is conducted pursuant to the authority of a Commission licensee in compliance with the Commission's other rules. Moreover, it should facilitate equipment compliance testing by laboratories that are not owned or operated by manufacturers or existing licensed service providers, increase the importation limit for devices that do not require an individual station license from 200 units to at least 1200 units, and eliminate its largely duplicative developmental licensing rules.

Finally, the Commission should revise Section 5.79 of its rules to provide streamlined processing for transfers of control and assignment applications involving experimental licenses. For both *pro forma* and substantial transactions, the current lack of streamlined assignment and transfer procedures creates an unnecessary burden on applicants and Commission staff alike, and there is no legal or policy justification for subjecting transfer and assignment of experimental license applications to a more lengthy review than applications involving other spectrum licenses.

## **II. CTIA SUPPORTS THE COMMISSION'S PROPOSALS TO ALLOW GREATER FLEXIBILITY IN EXPERIMENTAL LICENSING TO FACILITATE WIRELESS INNOVATION, WITH APPROPRIATE SAFEGUARDS TO PROTECT INCUMBENTS.**

In the *NPRM*, the Commission proposes to “build on the experimental licensing program’s record of promoting innovation and creating cutting-edge technologies”<sup>4</sup> by establishing new “program experimental licenses” that would enable parties to conduct research and experimentation under a single authorization. The Commission proposes three varieties of experimental licenses: (1) a research program experimental radio license; (2) an innovation zone

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<sup>4</sup> *Id.*

program experimental radio license; and (3) a medical program experimental radio license.<sup>5</sup>

CTIA supports the proposal to provide additional experimentation flexibility, thereby enhancing and accelerating research and innovation. To ensure that the benefits of the new licenses are not undermined by harmful interference and other risks, however, the Commission should maintain sufficient oversight of the program and provide robust protection for licensed wireless operations.

CTIA supports the Commission's proposed safeguards for program experimental licenses, such as: requiring that prior to the commencement of any experiment or test, certain information be submitted through web-based registration;<sup>6</sup> requiring that the registration information include a single point of contact or researcher in charge who can address concerns and act as a "stop-buzzer" to prevent interference;<sup>7</sup> and requiring that experiments must avoid the use of public safety frequencies.<sup>8</sup> Likewise, CTIA endorses the Commission's proposals regarding reporting requirements and dispute resolution procedures for all categories of program experimental licenses.<sup>9</sup>

Moreover, CTIA recommends that the Commission provide robust interference protection for CMRS operations by requiring advance coordination with and advance notification to all affected CMRS licensees (in the bands proposed for an experiment and in adjacent bands) and through stringent enforcement requirements. The spectrum bands utilized by CMRS providers are used intensively (including, as the Commission observes in the *NPRM*,

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<sup>5</sup> *Id.* ¶ 12.

<sup>6</sup> *See id.* ¶¶ 27, 44, 55.

<sup>7</sup> *See id.* ¶¶ 27, 33, 44, 51 n.95.

<sup>8</sup> *See id.* ¶ 28.

<sup>9</sup> *See id.* ¶¶ 27, 44, 55.

for 911 calls and other emergency communications<sup>10</sup>), and CMRS systems are very sensitive to external interference. Coordination and notification requirements are necessary to ensure that new program experimental licensees do not interfere with dynamic commercial wireless systems or hamper the ability of consumers to make and receive calls. Absent robust interference protection for CMRS operations, the new program experimental licenses could also create uncertainty for CMRS licensees' operations, potentially undermining efficient spectrum use.

*Detailed Experimentation Plan.* For all tests or experiments that would affect the CMRS bands (*i.e.*, experiments that are intended to operate in spectrum bands used by CMRS providers or in adjacent bands), the Commission should require that all program experimental licensees (whether research program, innovation zone, or medical program) coordinate with affected CMRS licensees by filing with the Commission a specific plan to avoid interference prior to the commencement of any such test or experiment.<sup>11</sup> The plan would need to include, at a minimum:

- A detailed description of the proposed testing and potential contributions to the advancement of spectrum use and wireless technologies;
- A description of the radio equipment that would be used;
- A description of the testing location for all equipment;
- Technical data for the testing (*e.g.*, power levels, frequencies, emissions information);
- The testing duration, along with a demonstration of need sufficient to justify the requested duration;
- A demonstration that the proposed testing will not interfere with CMRS operations, along with an explanation of all steps taken to avoid such interference; and

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<sup>10</sup> See *id.* ¶ 31; see also *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd 13994, 14008 ¶ 36 (2009) (subsequent history omitted) (stating that “[t]he importance of wireless communications for public safety is critical, especially as consumers increasingly rely upon their personal wireless service devices as their primary method of communication”).

<sup>11</sup> See *NPRM* ¶ 31.

- Contact information for a stop-buzzer individual who can address interference concerns and cease all testing transmissions immediately if interference occurs.

All authorizations affecting the spectrum bands used by CMRS providers should be limited to the activities described in the experimentation plan and only for the necessary duration. In addition, experimentation affecting the spectrum bands used by CMRS bands should be conducted during off-peak usage hours whenever possible, and any proposed testing during peak usage hours should be expressly included in the plan and supported with a demonstration of need.

*Notification to All Affected CMRS Licensees.* The Commission should require applicants to file the plans and provide notice to all affected CMRS licensees (operating in the band or in adjacent bands) at least 30 days in advance of the planned experimentation and testing. Thirty days is the minimum time necessary for engineering personnel from affected CMRS licensees (and their vendors) to review the detailed plans and technical specifics, ensure that they will not pose an interference risk to existing or planned CMRS operations, and then notify the Commission and the applicant of any concerns.<sup>12</sup> Program experimental licensees should also be required to engage in ongoing coordination with affected CMRS licensees, as appropriate. Moreover, the Commission should require an affected CMRS licensee's prior approval to a test or experiment where appropriate, such as in cases where experiments are conducted outside of buildings or away from controlled venues.<sup>13</sup>

*Stringent Enforcement.* In addition, the Commission also should develop an effective and efficient enforcement regime for program experimental licenses. For example, the stop-buzzer contact person must be able to control all devices used under an experimental authorization and

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<sup>12</sup> Of course, licensees would not be restricted from completing their review in less than 30 days.

<sup>13</sup> See *NPRM* ¶ 31.



cease transmissions immediately if interference to CMRS operations occurs (until the interference is resolved). In addition, the Commission should take strong action against program experimental licensees for noncompliance with the Commission's rules and procedures,<sup>14</sup> including revocation of program experimental licenses. It also should revoke or deny permission to conduct specific tests for noncompliance. The Commission should make clear in its rules that such enforcement action may be taken.

*Two-Year Maximum License Terms.* Instead of the proposed five-year license terms, CTIA suggests that the Commission initially adopt maximum two-year license terms for all program experimental licenses.<sup>15</sup> A two-year term would give the Commission an opportunity to evaluate the program launch and the lessons learned from the initial program authorizations. At this time, there is not yet enough experience with the proposed concept or sufficient reviewable data, including the impact of the program on existing operations (and any potential interference concerns regarding new program experimental licensees), on which to move forward with a five-year license model. After two years, the Commission can re-evaluate whether to adopt longer license terms for program experimental licenses.

CTIA also offers the following comments for each type of proposed program experimental license type.

**A. The Commission Should Expand Eligibility for Research Program Licenses to Include Commercial Entities, While Protecting Incumbent Operations.**

CTIA supports the Commission's efforts to develop an experimental license "nimble enough to account for the rapid changes and modifications typical of today's technological

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<sup>14</sup> See *id.* ¶ 32.

<sup>15</sup> See *id.* ¶¶ 35, 44, 53. As mentioned above, all program experimental license authorizations affecting the spectrum bands used by CMRS providers should be limited to the duration necessary to complete the proposed experimentation.

research,”<sup>16</sup> and CTIA urges the Commission to expand this opportunity to commercial entities as well as academic institutions and non-profit research organizations while protecting licensed wireless operations.<sup>17</sup>

*Commercial Eligibility.* Wireless vendor and carrier laboratories are important sources of innovation and experimentation that could benefit substantially from more streamlined experimental licensing procedures. For example, as the Commission recognizes in the *NPRM*, experimental authorizations ultimately led to the development of the Personal Communications Services (PCS) in the 1850-1990 MHz band.<sup>18</sup> In recent months, commercial entities have obtained experimental radio licenses (including Special Temporary Authority) to develop and test fourth-generation wireless technologies, including long-term evolution (“LTE”).<sup>19</sup> Moreover, as noted in the *NPRM*, “[d]iverse research projects are often conducted simultaneously under different experimental authorizations across separate organizational units ... or under different research partnerships *with corporate partners*.”<sup>20</sup> The Commission, therefore, should expand the availability of research program experimental radio licenses to wireless vendor and carrier laboratories because it would serve to expand the pool from which scientific experimentation may develop, further accelerating wireless research and innovation.

*Protecting Key Operations.* As mentioned above, CTIA supports the Commission’s targeted efforts to ensure that its new program experimental licenses do not create harmful

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<sup>16</sup> *Id.* ¶ 16.

<sup>17</sup> *Id.* ¶ 20.

<sup>18</sup> *See id.* ¶ 4; *see also Amendment of the Commission’s Rules to Establish New Personal Communications Services*, Second Report and Order, 8 FCC Rcd 7700 (1993) (stating that “over 100 companies are conducting more than 220 experiments pursuant to experimental licenses to develop and test PCS services and technologies”).

<sup>19</sup> *See, e.g.*, ELS File Nos. 0252-EX-PL-2010, 0318-EX-PL-2010, 0372-EX-ST-2010, 0393-EX-ST-2010, 0023-EX-ST-2011.

<sup>20</sup> *NPRM* ¶ 16 (emphasis added).

interference on the frequency bands commonly used in a campus setting and that are vital for public safety purposes or campus security operations, such as bands used by CMRS providers, public safety pool frequencies, and frequencies used to support emergency notifications.<sup>21</sup>

Requiring licensees to submit specific plans to avoid any interference with these bands will serve to protect these vital interests, as will requiring 30 days' advance notice to affected CMRS licensees and identifying a stop-buzzer contact person for each experiment.<sup>22</sup> In addition, as previously discussed, the Commission should adopt strong enforcement provisions and require program experimental licensees to specifically notify the licensee(s) listed for the affected band(s) in all situations.<sup>23</sup> It also should require a licensee's concurrence prior to a test, however, if specific conditions are met – for example, in cases where experiments are conducted outside of buildings or away from controlled venues.<sup>24</sup>

**B. The Commission Should Authorize Single-Entity Use of an Innovation Zone and Allow Parties to Use Spectrum Inventory Frequencies, While Protecting Incumbent Operations.**

In the *NPRM*, the Commission seeks to provide greater opportunities for testing, experimentation, and ultimately innovation through the use of innovation zone experimental radio licenses, which will allow for a broad range of experimentation by qualified applicants within a restricted geographic location.<sup>25</sup> CTIA agrees that establishing innovation zones will provide “a unique opportunity to foster robust wireless engineering experimentation and development that will lead to important contributions to both fundamental and applied research

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<sup>21</sup> *Id.* ¶ 31.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* ¶ 38.

in the field.”<sup>26</sup> CTIA generally supports the *NPRM* proposals with appropriate safeguards, including careful oversight and monitoring by the Office of Engineering and Technology (“OET”). CTIA additionally encourages the Commission to authorize single-entity licenses and require innovation zone licensees to discontinue use of frequency bands in the Commission’s spectrum inventory if the bands are auctioned (or reaucted) during the license term.

*Single-Entity Use.* The Commission should not adopt its proposal to restrict innovation zone experimental radio licenses from being used by a single entity at its exclusive-use facility (e.g., a manufacturer’s plant).<sup>27</sup> As mentioned above, wireless vendor and carrier laboratories are sources of innovation and experimentation that could benefit substantially from more streamlined experimental licensing procedures, and making innovation zone experimental radio licenses available to these laboratories would promote wireless research and technology development. Security and safety restrictions, however, limit the opportunity for these plants and related facilities to be open to third parties. Thus, consistent with the Commission’s goal of spurring wireless research, innovation zone experimental radio licenses should be available to a single entity that otherwise meets the technical credentials and other application requirements. Moreover, single-entity licenses can be made available in addition to the “shared-use” licenses proposed by the Commission, as they would not preclude entities from obtaining similar innovation zone experimental radio licenses at other, shared-use locations.

*Spectrum Inventory Frequencies.* To maximize the potential of innovation zone experimental radio licenses, the Commission should authorize them for a wide range of frequencies,<sup>28</sup> including frequencies in the Commission’s spectrum inventory. Including such

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<sup>26</sup> *Id.*

<sup>27</sup> *See id.* ¶ 41.

<sup>28</sup> *Id.* ¶ 42.

frequencies is consistent with the goals of the *NPRM*.<sup>29</sup> In addition, it will encourage additional development by increasing the range of frequencies available for experimentation without increasing the potential for harmful interference or other encroachments on existing spectrum use. The Commission should make clear, however, that experimental use under an innovation zone program experimental license is subject to discontinuance if the bands are auctioned (or reaucted) prior to the end of the experimental license term.<sup>30</sup> Otherwise, the uncertainty created by experimental license operations could affect auction bidding or otherwise deter investment in the bands.

*Protecting Key Operations.* As discussed above, the Commission correctly recognizes the importance of mobile wireless operations on college campuses and for public safety.<sup>31</sup> It also must protect CMRS licensees from the unintended consequences of innovation zone experimentation. For example, it should establish similar safeguards to those adopted for research program experimental radio licenses, including the submission of an interference plan and notification requirements, the identification of a stop-buzzer contact person, and strong enforcement provisions.<sup>32</sup>

*Accountability.* CTIA also encourages the Commission to hold all innovation zone experimental licensees accountable for their use. The best way to accomplish this and to ensure compliance with the Commission's rules is to establish requirements to provide detailed information in license applications and reporting before, during, and after testing.<sup>33</sup> For example, the Commission should maintain a record of experimentation by requiring licensees to

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* ¶ 31.

<sup>32</sup> *Id.* See also *supra* Section II.A.

<sup>33</sup> *Id.* ¶ 44.

submit applications with experiment parameters and file reports with the results of particular experiments.<sup>34</sup> Through these measures, the Commission can ensure that the benefits of enhanced experimentation do not come at the expense of existing services.

**C. The Commission Should Authorize Medical Program Licenses for All Devices with a Medical Purpose, and It Should Limit Operations to the Licensee's Medical Campus.**

The *NPRM* correctly recognizes that broadband-enabled medical devices are a crucial component for developing more innovative, efficient, and productive delivery of healthcare services.<sup>35</sup> CTIA supports the creation of test-bed environments in which manufacturers and developers can test wireless medical systems and devices and assess operational readiness, including through the specific proposals and safeguards contained in the *NPRM*.<sup>36</sup> CTIA urges the Commission not to limit its medical program experimental radio license proposal to the testing of medical devices that are used solely for therapeutic, monitoring, or diagnostic purposes.<sup>37</sup> Such a limitation could unduly restrict the development of other innovative medical technologies, including those related to the prevention of illnesses. Instead, the Commission should make such licenses available for testing all devices with a general medical purpose.

In addition, CTIA supports defining the geographic scope of permissible operations under the medical program experimental license, at least at the outset of this program, to operations on the licensee's medical campus.<sup>38</sup> Similarly, the Commission should not expand the scope of operations to include body-worn or implanted devices that will travel with the patient, and therefore out of the geographic zone and control of the experiment. This safeguard will provide

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.* ¶ 45.

<sup>36</sup> *Id.* ¶¶ 47-56.

<sup>37</sup> *Id.* ¶¶ 48, 54.

<sup>38</sup> *Id.* ¶ 54.

protection against unanticipated consequences, including interference with nearby mobile wireless devices and CMRS operations.<sup>39</sup>

### **III. THE EXPERIMENTAL LICENSING RULES SHOULD BE STREAMLINED, CONSOLIDATED, AND MODIFIED TO FOSTER GREATER INNOVATION AND EXPERIMENTATION ACROSS WIRELESS SERVICES.**

In the *NPRM*, the Commission makes a series of proposals to streamline, consolidate, and modify its rules to facilitate additional experimentation.<sup>40</sup> CTIA supports many of these proposals and agrees with the Commission that such changes could “open new opportunities for experimentation and remove barriers that may have prevented timely and productive testing.”<sup>41</sup> As discussed below, the Commission should clarify and relax its Part 2 and Part 5 rules to enhance opportunities for a wide variety of entities to engage in market trials and testing, although it should ensure that entities do not mask actual marketing and consumer product rollouts as market trials. The Commission also should streamline and synchronize its existing experimental and developmental licensing rules.

#### **A. The Commission Should Adopt the Proposed Rule Changes to Provide Greater Opportunities for a Wider Variety of Entities to Engage in Market Trials and Testing.**

CTIA supports the Commission’s proposal to expand the existing concept of limited market studies to include both product development trials and market trials.<sup>42</sup> As the Commission recognizes in the *NPRM*, market studies and real-world trials are “powerful tools” that “can be vital to the transformation of prototypes to fully functional new products and

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.* ¶¶ 57-85.

<sup>41</sup> *Id.* ¶ 81.

<sup>42</sup> *Id.* ¶ 63.

services that meet consumer needs.”<sup>43</sup> In particular, the Commission’s proposed market trial rules would create new marketing opportunities for a wide range of entities, including manufacturers, service providers, researchers, developers, and other innovators.<sup>44</sup> In addition, the proposed rules could expedite the product development cycle, thereby making it easier “to move products from the lab to the market.”<sup>45</sup> For example, authorizing more robust market trials would help manufacturers, service providers, and others identify product concerns and any remaining design issues under actual customer use scenarios. It also would help parties obtain a more expansive set of product evaluations and other feedback from prospective buyers at an earlier stage in the development process.

Similarly, the sale of evaluation kits to developers and system integrators should be allowed before equipment authorization is granted for the relevant component, as long as manufacturers continue to provide notice that the component has not yet been certified.<sup>46</sup> This would allow developers and system integrators to identify product concerns and design issues and provide feedback to manufacturers at an earlier stage in the development process. It would also enable developers and system integrators to develop hardware and software for the component sooner, thereby accelerating the introduction of innovative new products into the marketplace.

Although CTIA supports the Commission’s market trial and testing proposals, the Commission should ensure that any new or modified rules do not enable parties to “game” the licensing processes and undermine the goals of this proceeding. Parties should not be authorized

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<sup>43</sup> *Id.* ¶ 57.

<sup>44</sup> *See id.* ¶ 65.

<sup>45</sup> *See id.* ¶ 75.

<sup>46</sup> *Id.* ¶ 67.



to use an experimental radio service (“ERS”) license to conduct “soft” product rollouts disguised as market trials. Thus, CTIA agrees with the Commission that market trials should not permit sales to consumers of equipment that has not yet been certified.<sup>47</sup> Allowing direct sales to consumers of uncertified equipment would create significant accountability, compliance, and enforcement challenges for the Commission. For instance, if a consumer-owned uncertified device were to cause interference to licensed operations, the Commission and affected licensees may be unable to identify the source of interference. To the extent that the source of interference can be identified, resolving the interference would impose additional administrative burdens on the Commission and affected parties. ERS licensees must ensure that any trial devices provided to consumers are either returned to the licensee or rendered inoperable when the trial ends (*e.g.*, through the use of “remote kill” functions or similar technology). In addition, the Commission should require that all market trials have a stop-buzzer contact person who can control all devices and cease transmissions immediately if interference to CMRS and other licensed operations occurs (until the interference is resolved), and after the trial ends.

The Commission also should clarify that the prohibition under the current Section 2.803(e)(1)(iv) on the operation of devices in a residential area does not apply when the operation is conducted pursuant to the authority of a Commission licensee in compliance with the other provisions of current Section 2.803.<sup>48</sup> Manufacturers, developers, and service providers interested in evaluating commercial products such as mobile phones (including smartphones), tablet devices, and e-readers need to review the products in their actual use environments, including in residential areas. The existing safeguards of the licensee’s compliance obligations and the separate requirements of Section 2.803 (including labeling requirements and the

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<sup>47</sup> *See id.* ¶ 66.

<sup>48</sup> *See* 47 C.F.R. § 2.803(e)(1)(iv).

restriction against testing equipment that could not be approved) provide ample protection against any interference concerns or other potential problems. Requiring manufacturers, developers, and service providers to secure a Part 5 experimental license or special temporary authority beyond obtaining the authorization of the licensee for such testing (even under the Commission's proposed rules) affords little, if any, additional protection against interference. On the other hand, licensing adds additional burdens for both the Commission and those involved in product development and evaluation, and it can serve to delay the introduction of new devices into the marketplace.

*Compliance Testing.* The Commission should facilitate equipment compliance testing by laboratories that are not owned or operated by manufacturers or existing licensed service providers.<sup>49</sup> Such laboratories can provide additional avenues for innovators to test equipment and obtain critical technical feedback on their products. To ensure that these laboratories do not create new interference concerns, the Commission could, for example, issue licenses to them that are patterned after the proposed program license model, with similar terms, conditions, and renewal processes.<sup>50</sup> As noted above, manufacturers and other commercial entities should be eligible for research program experimental radio licenses.

*Importation Limit.* Finally, CTIA encourages the FCC to increase the importation limit for devices that do not require an individual station license from 200 units to at least 1200 units, as proposed by Hewlett-Packard.<sup>51</sup> As the Commission recognizes, the majority of wireless equipment and devices are now manufactured in other countries.<sup>52</sup> A larger importation limit

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<sup>49</sup> See *NPRM* ¶ 68.

<sup>50</sup> See, e.g., *id.*

<sup>51</sup> See *id.* ¶¶ 69-71.

<sup>52</sup> See *id.* ¶ 69.

would provide additional flexibility for manufacturers to design effective market trials, especially for products that are intended to be produced and distributed on a nationwide basis.

**B. CTIA Endorses the Commission’s Proposals to Streamline and Synchronize its Existing Experimental and Developmental Licensing Rules, and to Make Other Improvements to the Rules.**

The Commission proposes in the *NPRM* to streamline and consolidate its existing experimental and developmental licensing rules into its Part 5 experimental authorization rules.<sup>53</sup> CTIA supports this proposal and encourages the Commission to eliminate the seldom-used developmental licensing rules.<sup>54</sup> Removing those largely duplicative rules will provide additional clarity and regulatory certainty to innovators and promote additional experimentation. When it synchronizes the rules, the Commission should adopt the license term used for experimental licenses (2 or 5 years).

In the *NPRM*, the Commission also seeks comment on ways to modify its experimental licensing rules including, *inter alia*, whether to facilitate open area testing by entities that are not manufacturers or licensed service providers.<sup>55</sup> Consistent with its comments throughout this filing, CTIA urges the Commission to be cautious about allowing such entities to engage in open area testing. To the extent it authorizes such testing in open areas, CTIA recommends that the Commission require the testing proponents to obtain licenses that are patterned after the proposed program license model, with similar terms, conditions, and renewal processes.<sup>56</sup>

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<sup>53</sup> *Id.* ¶¶ 76-80.

<sup>54</sup> The *NPRM* notes that while the Commission has granted only 19 developmental licenses from January 1, 2005 through October 28, 2010, it has granted 2,339 new experimental licenses (including special temporary authority), 1,464 license renewals, and 388 license modifications. *Id.* ¶ 76.

<sup>55</sup> *Id.* ¶ 83.

<sup>56</sup> *See, e.g., id.* ¶ 68. Manufacturers and other commercial entities should be eligible for these licenses.

#### **IV. THE COMMISSION SHOULD STREAMLINE THE PROCESSING OF ASSIGNMENTS AND TRANSFERS OF CONTROL.**

The *NPRM* seeks comment on other areas, not specifically addressed in the *NPRM*, which “should be modified, clarified, or even eliminated to foster greater innovation.”<sup>57</sup> The Commission would be remiss in its efforts to streamline the Part 5 rules if it did not take this opportunity to modify the procedures governing applications for the assignment and transfer of control of experimental licenses. In contrast to the rules governing the Wireless Services, there are currently no procedures for the streamlined processing of such ERS applications.<sup>58</sup> As a result, entities holding a variety of licenses – including mobile services licenses worth tens of millions of dollars and covering vast geographic areas – often find that it is their ERS applications that can require the longest wait for approval of a proposed transaction. There is no legal or policy justification for subjecting ERS transfer and assignment applications to a more lengthy review than applications involving other spectrum licenses. Indeed, the opposite is true, as there is no competition or consumer protection issues associated with ERS licenses. Therefore, the Commission should revise Section 5.79 of its rules to provide for a level of streamlined processing that is similar to that available for transfer and assignment applications in the Wireless Services.

Citing goals of minimizing administrative delays and reducing transaction costs, the Commission adopted rules in 2004 that provide for “immediate approval” of most assignment

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<sup>57</sup> *Id.* ¶ 84.

<sup>58</sup> See 47 C.F.R. § 5.79 (prohibiting transfers and assignments unless “the Commission shall, after securing full information, decide that such a transfer is in the public interest and give its consent in writing”).

and transfer applications in the Wireless Services.<sup>59</sup> To qualify for immediate approval procedures, the licensee cannot be a designated entity, the application cannot include any waiver or declaratory ruling requests, and the proposed transaction cannot result in a geographic overlap of attributable spectrum that could be used to provide interconnected mobile voice or data services.<sup>60</sup> If these conditions are met, applications are typically consented to on the next business day.<sup>61</sup>

The Commission established that it had adequate legal authority to implement such procedures, even for services that do not fall under the Commission's forbearance authority. The Commission reasoned that, consistent with Sections 308, 309, and 310(d) of the Communications Act:

we continue to require an application and approval process. In addition, in order to determine whether to approve these transactions, the Commission requires that each application establish a distinct set of facts and representations concerning the particular license assignment or transfer of control application before it can be approved. Thus, before any particular application will be approved under these immediate approval procedures, the Commission will have determined, based on the particulars of that application, that all of the criteria relevant to establishing that the public interest would be served by the granting of the application had been supplied, and the statutory requirements for case-by-case review and approval of the application will have been satisfied.<sup>62</sup>

Because transfers and assignments of ERS licenses are governed by the same statutory provisions that govern licenses in the Wireless Services,<sup>63</sup> the Commission should have the same authority to implement immediate approval procedures for ERS applications.

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<sup>59</sup> See *Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Markets*, Second Report and Order, 19 FCC Rcd 17503 ¶¶ 101-111 (2004) (“*Secondary Markets Order*”); see also 47 C.F.R. § 1.948(j)(2).

<sup>60</sup> 47 C.F.R. § 1.948(j)(2)(i)(A)-(C).

<sup>61</sup> *Id.* § 1.948(j)(2)(ii).

<sup>62</sup> *Secondary Markets Order* ¶ 108.

<sup>63</sup> Like Wireless Service licenses, ERS licenses provide authority for the “transmission of energy or communications or signals by radio.” 47 U.S.C. § 301.

As another example of streamlined procedures in the Wireless Services, many Part 90 private land mobile licensees may rely on 180-day conditional operating authority to close assignment and transfer of control transactions before receiving Commission consent to their applications.<sup>64</sup> In adopting this process to reduce regulatory burdens on licensees and promote efficiency, the Commission explained that:

the Commission, through the rule making process, is simply implementing a conditional licensing procedure during the interim application processing period for categories of applications, including those for assignments of authorization and transfers of control, that are virtually always granted because they involve no special issues and pose minimal threat to the operations of existing shared users.<sup>65</sup>

ERS transfer and assignment applications likewise are almost always granted, involve no special issues, and pose minimal threat to other operations. Therefore, the Commission could also consider granting conditional authority for such ERS applications as another possible streamlining method.

Requiring an approval for ERS license transfers and assignments is particularly odd given that no ownership or “real party in interest” information is required to obtain a new experimental license in the first place.<sup>66</sup> Thus, in the case of a transfer of control where the licensee entity remains the same, the Commission obtains information about the licensee’s proposed *new*

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<sup>64</sup> See 47 C.F.R. §§ 90.159(c); 1.931(b)(11).

<sup>65</sup> *Amendment of Part 90 of the Commission’s Rules to Implement a Conditional Authorization Procedure for Proposed Private Land Mobile Radio Service Stations*, Report and Order, 4 FCC Rcd 8280 ¶¶ 7, 29 (1989). The Commission also relied on the legislative history of Section 309 of the Communications Act, noting that “Congress recognized that the routine nature of some applications does not require public notice of filing and encouraged the Commission to develop procedures that would permit such applications to be ‘granted as quickly and expeditiously as possible.’” *Id.* at note 34.

<sup>66</sup> See 47 C.F.R. § 5.51(c) (listing foreign government representation as the only ownership-based eligibility restriction). CTIA notes that the electronic Form 702 (for assignments) and Form 703 (for transfers of control) ask whether the proposed assignee/transferee is a “representative of an alien or a foreign government.” While foreign governments are not permitted to hold experimental licenses, there is no such prohibition applicable to alien individuals or entities. Indeed, an applicant for a new ERS license using a Form 442 is not asked about alien ownership. Thus, the Commission should revise Forms 702 and 703 to delete the reference to aliens.

controlling party that it never had about a licensee's controlling party when it issued the *initial* license. There can be no legitimate need for information at the transfer of control stage that is not needed at the new applicant stage. And while, in the assignment context, the Commission clearly needs to know the identity of the new licensee entity, it is unclear why any of the very basic information that is provided about the assignee (*e.g.*, name and address) could require weeks of review in some cases.

At a bare minimum, the Commission should develop streamlined processing for transfers and assignments that are only *pro forma* in nature. Currently, even a minor corporate restructuring – such as creating a new wholly-owned subsidiary that is inserted in the ownership chain between the licensee and its ultimate parent – triggers the need for a prior approval, even though there is no change in the ultimate control of the licensee. Telecommunications carriers holding billions of dollars worth of spectrum in the Wireless Services may undertake such a restructuring without any prior notice to the Wireless Telecommunications Bureau,<sup>67</sup> but a single experimental license could hold up the restructuring until OET approval is obtained. While the post-consummation *pro forma* notification procedures for telecommunications carriers are based on statutory forbearance authority that is not available for non-common carriers, the disparity between the two procedures underscores the need to provide faster processing, especially for *pro forma* transactions.

For both *pro forma* and substantial transactions, the lack of streamlined assignment and transfer procedures creates an unnecessary burden on applicants and Commission staff alike. It is not uncommon for OET consent to a transaction to take weeks longer than consent needed for an applicant's other wireless licenses. In many cases, the continued delay in closing a

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<sup>67</sup> See 47 C.F.R. § 1.948(c)(1) (requiring only that a notification of the *pro forma* transfer or assignment be filed within 30 days after the change).

transaction can result in significant costs to one or more of the parties involved. In such situations, some licensees have found it more expedient to surrender their experimental licenses and withdraw the pending application so that the contemplated transaction could proceed without violating Commission rules, then re-apply for new experimental licenses after the transaction has closed.<sup>68</sup> While perfectly permissible, such “work around” solutions result in an inefficient use of limited Commission resources given the additional filings that must be reviewed and processed. Moreover, it can put a licensee’s experimentation program on hold while waiting on the new license. Such an outcome is clearly not in the public interest, and the current proceeding presents an ideal opportunity to improve the process.

## **V. CONCLUSION**

For the foregoing reasons, the Commission should streamline its experimental and developmental licensing rules and authorize new program experimental licenses. In doing so, however, the Commission should protect incumbent CMRS operations against interference from new types of experimental licenses and ensure that entities do not engage in *de facto* consumer product rollouts under the guise of market trials. Finally, the Commission should revise its rules

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<sup>68</sup> As noted earlier, a new experimental license application contains no ownership review, so if the technical aspects of the application are identical to the previously approved license, the applicant might expect relatively expedient approval.



to provide streamlined processing for transfer of control and assignment applications involving experimental radio licenses.

Respectfully submitted,

By:     /s/   *Brian M. Josef*

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